

# **Friedmann**

## ***EXHIBIT D***

1 UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 In re:

4 SEARS HOLDINGS CORPORATION, et al.,  
Debtor.

5  
6 Chapter 11  
Case No. 18-23538 (RDD)

7  
8 -----x

9 \*\*\*HIGHLY CONFIDENTIAL\*\*\*

10 30(b)(6) DEPOSITION OF ESL INVESTMENTS, INC.,

11 BY ITS CORPORATE REPRESENTATIVE

12 KUNAL KAMLANI

13 NEW YORK, NEW YORK

14 WEDNESDAY, JANUARY 23, 2019

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18  
19  
20  
21 Reported by:

22 MARK RICHMAN, CSR, RPR, CM

23 JOB NO: 154614

1  
2  
3 New York, New York

4 January 23, 2019

5 11:45 A.M.  
6

7 30(b)(6) DEPOSITION of ESL INVESTMENTS,  
8 INC. by its Corporate Representative KUNAL  
9 KAMLANI, held at the offices of Akin Gump  
10 Strauss Hauer & Feld LLP, One Bryant Park, New  
11 York, New York, before MARK RICHMAN, a  
12 Certified Shorthand Reporter, Registered  
13 Professional Reporter and Notary Public of the  
14 State of New York  
15  
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25

1 APPEARANCES:

3 AKIN GUMP STRAUSS HAUER & FELD

4 Attorneys for Unsecured Creditors

5 One Bryant Park

6 Bank of America Tower

7 New York, New York 10036

8 BY: ABID QURESHI, ESQ.

9 DEAN CHAPMAN, JR., ESQ.

10 JOHN KANE, ESQ.

11 JOSEPH SORKIN, ESQ.

12 CHRISTOPHER CARTY, ESQ.

1 A P P E A R A N C E S (Continued):

2  
3 WEIL, GOTSHAL & MANGES

4 Attorneys for Debtors

5 and Debtors-in-Possession: Sears Holdings

6 Corporation, et al.

7 200 Crescent Court

8 Dallas, Texas 75201

9 BY: PAUL GENENDER, ESQ.

10 JENNIFER CROZIER, ESQ.

11  
12  
13  
14  
15  
16 WEIL, GOTSHAL & MANGES

17 Attorneys for Debtors

18 and Debtors-in-Possession: Sears Holdings

19 Corporation, et al.

20 767 Fifth Avenue

21 New York, New York 10153

22 BY: GARRETT FAIL, ESQ.

A P P E A R A N C E S (Continued):

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

Attorneys for the ABL Lenders

4 Times Square

New York, New York 10036

BY: SHANA ELBERG, ESQ.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

Attorneys for the Restructuring Committee

1285 Avenue of the Americas

New York, New York 10019

BY: DAVID GILLER, ESQ.

KAREN KING, ESQ.

1 A P P E A R A N C E S (Continued):

2  
3 CLEARY GOTTlieb STEEN & HAMILTON

4 Attorneys for ESL Investments, Inc.

5 and the Witness

6 One Liberty Plaza

7 New York, New York 10006

8 BY: JAMES BROMLEY, ESQ.

9 LEWIS LIMAN, ESQ.

10 ILYA GLINCHENKO, ESQ.

11  
12  
13  
14  
15  
16 PRESENT:

17 MICHAEL BAIRD, Pension Benefit Corp (via phone)

18 SAMUEL STAR, FTI Consulting

19 CHRISTA HART, FTI Consulting

20 MARSHALL EISLER, FTI Consulting

21 BRADLEY GEER, Houlihan Lokey

22 NATALIE WEELBORG, Houlihan Lokey

1 KAMLANI (HIGHLY CONFIDENTIAL)

2 KUNAL KAMLANI, called as a  
3 witness, having been first duly sworn  
4 by the Notary Public (Mark Richman),  
5 was examined and testified as  
6 follows:

7 EXAMINATION BY MR. QURESHI:

8 Q. Mr. Kamalani, good morning. For  
9 the record, my name is Abid Kureshi of  
10 Akin Gump, and as I think you know we  
11 represent the Official Committee of  
12 Unsecured Creditors in these cases.  
13 Sir, have you had your deposition taken  
14 before?

15 A. Not by you.

16 Q. But you have been deposed before?

17 A. I have.

18 Q. Okay. Then I am going to  
19 dispense with reminding you of the rules  
20 of the road for this type of proceeding,  
21 other than to tell you that if you don't  
22 understand a question that I ask you or  
23 if you need a clarification, please ask  
24 me and I'll be happy to restate or  
25 clarify the question. If you don't do



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2 Q. So what I'm trying to understand  
3 is why do you draw a connection between  
4 the proceeds coming into the estate to  
5 pay down the first lien and the  
6 assumption of the junior DIP on the one  
7 hand, and liabilities on the other?

8 A. So this transaction was not put  
9 together in an hour or a day. The final  
10 transaction was a negotiation that took  
11 a course over several days if not weeks  
12 to land in a final spot.

13 Along the way in that negotiation  
14 there was several discussions about  
15 Transformco assuming the liabilities of  
16 the estate.

17 The estate was concerned that --  
18 let me rephrase.

19 During the discussions with  
20 respect to TransformCo's willingness to  
21 take over liabilities of the estate, the  
22 representatives of the estate provided  
23 us with their view on what their debt  
24 balances were going to be at closing and  
25 what their cash was going to be at

1 KAMLANI (HIGHLY CONFIDENTIAL)

2 closing.

3 Rather than debate them on what  
4 the debt balances were going to be at  
5 closing, we agreed to just take their  
6 numbers for face value.

7 And so the context here is very,  
8 very important. And the context was  
9 that we would take the liabilities that  
10 they were asking us to take because they  
11 were showing us debt balances that would  
12 not allow them to satisfy those  
13 liabilities on their own, if in fact  
14 their debt balances turned out to be  
15 correct.

16 So in order to make sure that we  
17 entered into a transaction that was fair  
18 for both sides, if their debt balances  
19 turned out to be correct, and we take  
20 the liabilities, no adjustment is  
21 needed.

22 However, we're not going to have  
23 the benefit of hindsight until after the  
24 closing date or at the closing date.

25 So if their debt balances are

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2 incorrect and they actually turn out to  
3 be lower than \$1.2 billion, and had we  
4 known that X-weeks ago, then we wouldn't  
5 have taken on the liabilities that they  
6 asked us to take because they would have  
7 had the cash to satisfy those  
8 liabilities on their own. But they did  
9 not want to take that risk.

10 The committee, as conveyed by the  
11 advisors, is that they were extremely  
12 risk averse to being in a position of  
13 having liabilities that they could not  
14 satisfy.

15 We are in the business of taking  
16 risk. So we were willing to take that  
17 risk with the caveat that if it turns  
18 out that you would have had the cash to  
19 satisfy those liabilities, then in fact  
20 we should have a credit because we would  
21 know that at the closing table when we  
22 don't know it now.

23 Q. And at the time these  
24 negotiations were taking place did you  
25 have an understanding as to the

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2 with the company and reduce what would  
3 otherwise come in on the closing date?

4 A. So I don't know the exact  
5 mechanics of how all the wiring will  
6 work. The net effect is that 120  
7 million should be applied toward cash  
8 that's required at closing.

9 Q. Over the course of today you had  
10 mentioned a couple of areas of the  
11 negotiations concerning the APA that  
12 were principally handled by Mr. Lampert,  
13 the two that I recall as I sit here is  
14 the credit bidding, I guess it's three,  
15 the credit bidding, the release and the  
16 lease designation rights, correct?

17 A. Yes.

18 Q. Are there any other areas of the  
19 negotiations concerning the APA that you  
20 recall Mr. Lampert to have been  
21 particularly involved in?

22 A. My recollection is those are the  
23 primary ones.

24 MR. QURESHI: That is all I have.

25 Thank you very much for your time.

1 KAMLANI (HIGHLY CONFIDENTIAL)

2 THE WITNESS: Thank you,  
3 appreciate it.

4 MR. QURESHI: Anybody else?  
5 Anybody on the phone have any  
6 questions? Then we shall go off the  
7 record and call it a day.

8 MR. BROMLEY: Thank you much.

9 (Time noted:6:20 p.m.)  
10

11 \_\_\_\_\_  
12 KUNAL KAMLANI  
13

14 Subscribed and sworn to  
15 before me this \_\_\_\_\_  
16 day of \_\_\_\_\_, 2019.  
17

18 \_\_\_\_\_  
19 Notary Public  
20  
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KAMLANI (HIGHLY CONFIDENTIAL)

E X H I B I T S

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PREVIOUSLY MARKED EXHIBITS

NONE

I N D E X

WITNESS	EXAMINATION BY	PAGE
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REQUESTS

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NONE

KAMLANI (HIGHLY CONFIDENTIAL)

CERTIFICATION

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, MARK RICHMAN, Certified Shorthand  
Reporter, Registered Professional Reporter  
and Notary Public for and within the State  
of New York, do hereby certify:

That the witness whose testimony is  
herein set forth, was duly sworn by me; and  
that the within transcript is a true record  
of the testimony given by said witness.

I further certify that I am not related  
to any of the parties to this action by  
blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 23rd day of JANUARY, 2019.



MARK RICHMAN, CSR, RPR, CM

\* \* \*



NAME OF CASE:

DATE OF DEPOSITION:

NAME OF WITNESS:

Reason Codes:

1. To clarify the record.

2. To conform to the facts.

3. To correct transcription errors.

Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

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